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June 27, 2007

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Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary
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c/o Anne-Marie Beaudoin, Directrice du secrétariat
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Attention: Office of the Secretary

Dear Sirs/Mesdames:

Proposed Repeal and Replacement of MI 52-109 "Certification of Disclosure in Issuers' Annual and Interim Filings" (the "Certification Instrument")

This letter is being submitted in response to the Request for Comment dated March 30, 2007. Numbering in this letter follows the numbering in the specific requests for comment set forth in the published Notice and Request for Comment.

Introductory Comments

1. We are pleased that Certification Instrument will now be a National Instrument. It is important that standards for financial reporting be provided on one consistent national basis.

2. We applaud the decision not to require an auditor report on ICFR. Canadian issuers and their boards of directors (or equivalent) will be able to decide whether or not to obtain such a report after weighing the benefits of obtaining such comfort against the costs of doing so.

Specific Requests for Comment

Question 1

The definition of "reportable deficiency" is an improvement over the definition of "material weakness" in the U.S. under Public Company Accounting Oversight Board Auditing Standard No. 2. However, we note that the SEC has recently adopted a new definition of "material weakness". If the CSA decides to use a different defined term, it would be helpful to include in the Companion Policy the CSA's views on the extent to which the definition of "reportable deficiency" differs from the SEC's definition of "material weakness".

Part 2 of the Certification Instrument should specify the circumstances in which an issuer would be required to make the disclosure contemplated in paragraph 5.2 of the forms of certificate. The instruction should make it clear that paragraph 5.2 would be included only if the certifying officers are unable to certify paragraph 5 of the forms of certificate without a qualification because they are aware of an unremediated reportable deficiency in design as at the period end.

Section 8.4(1) of the Companion Policy seems to suggest that if the certifying officers are aware of a reportable deficiency in design that has not been remediated, they cannot file a certificate unless the issuer has committed to a remediation plan to address the reportable deficiency. It may be the case that at the time the issuer is required to make the periodic filings the issuer has taken additional steps to assure itself that the filings do not contain a misrepresentation and fairly present the issuer's financial position, but the issuer has not yet decided on a remediation plan. It should be possible for the issuer to complete its filings, including providing the related CEO/CFO certificates, so long as it describes the steps it will take respecting financial reporting pending the implementation of a change in the design of ICFR to address the reportable deficiency. The language in the Certification Instrument, certificate and Companion Policy should be changed to make it clear that a certificate may be given even where the issuer has not committed to a remediation plan. For example, section 5.2(b) of the form of certificate could be

changed to "the issuer's plans, if any, to remediate any such reportable deficiency relating to design" (which would conform to section 6(b)(iv) of the form of annual certificate.) Alternatively, it could be clarified in the Certification Instrument, form of certificate or Companion Policy that a "remediation plan" includes the implementation of additional procedures pending the implementation of a change to ICFR design.

Paragraphs 5.2 and 5.3 of the interim certificates (Form 52-109F2) need to be modified to reflect the fact that since evaluation of ICFR happens on an annual basis and not a quarterly basis, it is not possible for the certifying officers to certify on a quarterly basis that all reportable deficiencies relating to design of ICFR at the end of the interim period have been identified. We believe that the purpose of the qualification is simply to address the situation where the certifying officers (i) have become aware of a reportable deficiency relating to design which the issuer is unable to remediate prior to the release of the interim filings but (ii) are comfortable that the interim filings do not contain a misrepresentation and fairly present the issuer's financial position in all material respects. Accordingly, we believe that the phrase "The issuer has disclosed in its interim MD&A for any reportable deficiency relating to design existing at the end of the interim period:" should be rewritten as "The issuer's other certifying officer(s) and I have identified a reportable deficiency relating to design existing at the end of the interim period and the issuer has disclosed in its interim MD&A:". Corresponding changes could be made to the annual certificates.

Question 2

We support the existence of an ICFR design accommodation for venture issuers. However, the availability of the ICFR design accommodation for venture issuers pursuant to section 2.2 of the Certification Instrument should not be limited to those venture issuers that "cannot reasonably remediate" and it should not be necessary for the venture issuer to explain why it "cannot reasonably remediate" the reportable deficiency. The condition that the venture issuer "cannot reasonably remediate" the reportable deficiency is vague and unnecessary. The Certification Instrument requires the venture issuer to disclose the existence of the reportable deficiency, the risks relating thereto and any steps taken to mitigate those risks. This disclosure should be sufficient to enable investors to make an informed investment decision regarding the venture issuer. Furthermore, the "risks" to be identified by a venture issuer pursuant to section 2.2(b) of the Certification Instrument should be limited to "risks relating to ICFR" as distinguished from business or operational risks that may also exist as a result of the reportable deficiency.

Question 3

We support the existence of scope limitations for investments in underlying entities. We do have some comments on the proposed limitations, however.

Section 2.3(2)(b) of the Certification Instrument should be limited to the reporting issuer's proportionate interest in the proportionately consolidated entity or variable interest entity. If summary financial information is to be required, then it should be limited to key metrics which should be specified in the Certification Instrument rather than the Companion Policy so that there is no uncertainty as to whether the disclosure provided by the issuer in the MD&A, which the certifying officers are to certify, meets the requirements of the Certification Instrument. In addition, the summary financial information should not be required if the portion of the underlying entity's revenues, income or assets included in the reporting issuer's financial statements represents in each case less than a threshold amount, such as 20% of the reporting issuer's consolidated revenue, income or assets, as applicable.

We also believe there should be a scope limitation where the reporting issuer holds a controlling interest in a subsidiary entity that is a publicly traded issuer that is itself subject to a CEO/CFO certification requirement. We do not think it is necessarily true that with respect to a publicly traded subsidiary the parent will have the ability to design and evaluate the effectiveness of ICFR at the subsidiary entity level. Moreover, where the subsidiary is subject to a CEO/CFO certification requirement, it should not be necessary to require the CEO and CFO of the parent to duplicate the efforts of the CEO and CFO of the subsidiary with respect to the design and evaluation of ICFR at the subsidiary.

Questions 4 and 5

A period of 90 days post-acquisition to be able to certify design of DC&P and ICFR with respect to the acquired business is too short a time. Issuers in the U.S. are permitted to exclude an acquired business from Management's Report on Internal Control over Financial Reporting for up to one year from the date of acquisition.

Where a scope limitation is required because of an acquisition of a business, there should be no requirement to provide summary financial information respecting the acquired business. If the acquired business is a "significant acquisition", then financial information is required to be provided in accordance with Part 8 of National Instrument 51-102 and if it is not a "significant acquisition" then separate financial disclosure would not be meaningful to investors.

Question 6

(i) The third sentence in section 3.3 of the Companion Policy should be deleted. It should be left to the certifying officers' judgment as to what skills an employee involved in design or evaluation of DC&P and ICFR need have since the certifying officers have responsibility for design and evaluation of DC&P and ICFR. Furthermore, an employee involved in testing a component of ICFR may

not need to have any knowledge or skill respecting the ICFR which is being tested in order to run tests on the instruction of a more senior individual or certifying officer.

(ii) In certain places in the Companion Policy it is stated that "design" includes the "implementation" of the relevant controls (see sections 6.1 and 8.1(3)(c) of the Companion Policy). It would be helpful if the Companion Policy clarified that "implementation" does not mean that the controls have been adhered to or work as designed. Such a clarification might help distinguish design from operating effectiveness.

(iii) The Certification Instrument provides that certifying officers can design or "cause to be designed" DC&P and ICFR. However the language used in several places in the Companion Policy contemplates that only the certifying officers are involved in the design process. For example, the second sentence of section 6.4 of the Companion Policy states that certifying officers should design the DC&P and ICFR (rather than design or cause to be designed) using "their" judgment (rather than the judgment of whomever is involved in the design of the particular DC&P or ICFR). We suggest you consider including a sentence in section 3.3 of the Companion Policy to the effect that references to the certifying officers and their actions and judgment in the Companion Policy include those employees and third parties to whom responsibility has been delegated under the supervision of the certifying officers.

(iv) In section 6.5(2) of the Companion Policy, it would be preferable to state that the certifying officers first identify and "assess" risks faced by the issuer, rather than use the word "understand". Also, the risks to be identified should be just financial reporting risks. ICFR is focussed on financial reporting risks and this is the approach reflected in the SEC's interpretive guidance on Management's Report on Internal Control Over Financial Reporting (the "SEC Interpretative Guidance"). Also, the last sentence in the second paragraph under section 6.5(2) of the Companion Policy should be deleted. It is not accurate as stated and the point is made (and made accurately) in section 6.5(4) of the Companion Policy.

(v) In several places in the Companion Policy the language is unduly prescriptive and should be modified to reflect the fact that for different issuers some of the guidance given is not relevant or is of little relevance. For example:

(a) In section 6.6(3), the words "Certifying officers should consider the following documentation of an issuer's control environment:" should be changed to "Information respecting an issuer's control environment may

be contained in:". (Note that a corresponding change should be made to section 7.12(2).)

(b) In section 6.7, the words "DC&P should generally include the following components" should be changed to "DC&P may include the following".

(c) In the second paragraph in section 6.9(6), the words "The certifying officers should consider the efficiency with which an issuer's ICFR design could be evaluated…" should be changed to "The certifying officers may wish to consider the efficiency with which the issuer's ICFR design may be evaluated…".

(d) In the last paragraph of section 7.6, "should" should be changed to "may".

(e) In section 7.9(2) references to "will generally require" or "will likely require" should be replaced with "generally should be subject to".

(vi) With respect to section 6.7 of the Companion Policy, some of the enumerated components may be included in a mandate for a disclosure committee of the issuer rather than a disclosure policy.

(vii) In section 6.8 of the Companion Policy, replace "In order for ICFR to provide reasonable assurance….the issuer's GAAP, it should generally include the following components:" with "In order to provide reasonable assurance….the issuer's GAAP, the design of ICFR should generally address the following:" to improve readability and be less prescriptive.

(viii) We question the utility of the approach adopted in section 6.9 of the Companion Policy. An approach that requires the identification and design of ICFR design components to address every relevant assertion for every significant account of an issuer does not seem to us to be a "top-down, risk-based" approach. The guidance in this section appears to have been derived from standards issued by the Public Company Accounting Oversight Board. We believe that an approach more in line with the SEC Interpretive Guidance would be more helpful. See, in particular, the discussion under the headings "Identifying Controls that Adequately Address Financial Reporting Risks" and "Evaluation of Control Deficiencies" of the SEC Interpretive Guidance. In any event, we think the use of the term "assertions" is potentially confusing since (with the exception of section 6.9(4)(e), which does not fit with the rest of section 6.9(4)) what is being identified are the premises or assumptions underlying the account.

It is not clear in the third paragraph in section 6.9(6) of the Companion Policy why the certifying officers should consider the interaction of components in

section 6.8 of the Companion Policy. Is the point that a control may serve several purposes simultaneously?

(ix) The role of the board of directors and the audit committee appear to be overstated in certain places in the Companion Policy. For example:

(a) In the last sentence of section 6.10(a), the word " extensive" should be replaced with "increased".

(b) The statement in section 6.10(b) that an effective board is "actively engaged in shaping and monitoring" the issuer's control environment overstates the board's periodic oversight role.

(c) In section 6.10(c) the suggestion that directors with appropriate financial expertise and objectivity might be able to perform some compensating procedures overstates the board's role. (Rather the directors should ask questions of management and the auditors respecting the treatment of material accounts, whether there were any disagreements between management and the auditors and whether the auditors would have preferred a different treatment and the impact on reported results of any such different treatment.)

(x) In section 6.10(d) of the Companion Policy there should be some reference to the need to consider the impact on the auditors' independence of engaging the auditors to perform such services.

(xi) In section 6.13(b) of the Companion Policy it is not the scope and quality of monitoring that should be considered by the certifying officers, rather it should be the results of such monitoring that should be considered (i.e., did the monitoring reveal any deficiencies).

(xii) Guidance respecting the documenting of ICFR and DC&P design is unduly prescriptive. A principles-based approach should be used. The principle is set out in the first sentence of section 6.15(1) of the Companion Policy. Sections 6.15(2) through (4) of the Companion Policy should be examples of items that the certifying officers may wish to consider documenting. The introductory language in each of sections 6.15(2) to (4) of the companion policy should be changed to "With respect to the design of ICFR and/or DC&P, the certifying officers may wish to document the following to the extent relevant to the issuer".

(xiii) Section 6.15(4)(h) of the Companion Policy seems to suggest that the certifying officers will consider every period whether there is a reportable deficiency in design. Either this section should be modified to be specific to year end only or

the section should be redrafted to reference certifying officers' conclusions respecting any significant deficiency in ICFR which is identified in respect of the period. Corresponding changes should be made to section 7.12(2)(d) of the Companion Policy.

(xiv) As part 7 of the Companion Policy deals with evaluation of effectiveness, rather than of design, of DC&P and ICFR, the heading should be changed to "EVALUATING EFFECTIVENESS OF DC&P AND ICFR".

(xv) The word "not" should be deleted from section 7.2 of the Companion Policy.

(xvi) In the first paragraph of Section 7.5 of the Companion Policy, the certifying officers should only need to assure themselves that the third party has relevant knowledge and ability to provide the necessary assistance. The certifying officers cannot "ensure" that the third party does in fact have such knowledge and ability. Moreover, the certifying officers should not need to make inquiries respecting the qualifications of individual employees of the third party.

The last two sentences in the second paragraph of section 7.5 of the Companion Policy are puzzling. The certifying officers should be able to use (and if necessary should act upon) any ICFR-related procedures performed and findings reported by the external auditor as part of the audit. However, they should also do more, whether the information provided by the external auditor is the result of procedures performed in connection with the audit or a separate engagement.

(xvii) Not only are the requirements of section 10.3(6) of the Companion Policy unduly prescriptive, but we are concerned that it is not possible to meet these requirements. The certifying officers cannot ensure that the underlying entity's financial statements are received on a timely basis since the certifying officers may have little or no influence over the timing of the preparation and distribution of such financial statements. The certifying officers also may have little or no knowledge of the underlying entity's accounting policies – their knowledge may be limited those accounting policies identified in notes, if any, to the underlying entity's financial statements.

Question 7

We have identified additional topics which should be addressed in the Companion Policy in our responses above.

We are pleased to have had the opportunity to provide you with our comments. If you have any questions or comments please contact Andrew MacDougall at 416-862-4732.

Yours very truly,

OSLER, HOSKIN & HARCOURT LLP

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